

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

GENERAL MOTORS CORPORATION/MOTORS LIQUIDATION COMPANY F/K/A

GENERAL MOTORS CORP., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 15, 2009

2:03 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1 HEARING re Commencement of Chapter 11 Cases and First Day  
2 Hearing

3  
4 HEARING re Motion of Debtors for Entry of an Order Pursuant to  
5 11 U.S.C. Section 105(a) Directing that Certain Orders in the  
6 Chapter 11 Cases of Motors Liquidation Company, et al, f/k/a  
7 General Motors Corp., et al. be Made Applicable to Subsequent  
8 Debtors

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Transcribed by: Sharona Shapiro

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A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

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BY: RONIT J. BERKOVICH, ESQ.

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UNITED STATES DEPARTMENT OF JUSTICE

United States Attorney's Office

Southern District of New York

86 Chambers Street

New York, NY 10007

BY: MATTHEW L. SCHWARTZ, AUSA

1 P R O C E E D I N G S

2 THE COURT: Okay, GM. Who's going to take the lead?

3 MS. BERKOVICH: Good afternoon, Your Honor, Ronit  
4 Berkovich, Weil Gotshal for the debtors, Motors Liquidation  
5 Company, for Remediation and Liability Management Company and  
6 Environmental Corporate Remediation Company.

7 On October 9th, the Remediation and Liability  
8 Management Company, Inc. and Environmental Corporate  
9 Remediation Company, Inc., that we refer to as REALM and  
10 ENCORE, filed Chapter 11 petitions. These are both direct  
11 subsidiaries of the main debtor in the case, Motors Liquidation  
12 Company. These two entities were formed by General Motors in  
13 the 1980s to manage General Motors environmental remediation  
14 liabilities and they also own several properties that were  
15 formerly owned by General Motors.

16 Motors Liquidation Company has been working with  
17 environmental regulators, local communities and other  
18 stakeholders to find a solution to its remediation obligations  
19 and it believes that by filing Chapter 11 petitions for REALM  
20 and ENCORE they can manage the process and more efficiently  
21 deal with all of those entities' environmental remediation  
22 obligations.

23 There's one motion on for today. That's the motion to  
24 have the orders that were entered in Motors Liquidation Chap --  
25 certain relevant orders that were entered in the MLC Chapter 11

1 cases also apply in the REALM and ENCORE Chapter 11 cases,  
2 including the joint administration order.

3 We did receive one objection to the motion. That  
4 objection was filed by the U.S. Attorney's Office. And the  
5 concern in that objection is that we would seek to have the bar  
6 date order that was entered in the MLC Chapter 11 cases also  
7 apply in the REALM and ENCORE Chapter 11 cases. We did confer  
8 subsequently with the U.S. Attorney's Office and we informed  
9 them that it is not our intention to have the bar date order  
10 from the MLC Chapter 11 cases apply in the REALM and ENCORE  
11 Chapter 11 cases and that we would make that representation on  
12 the record. And we understand that based on that  
13 representation that the U.S. Attorney's Office objection is  
14 resolved.

15 THE COURT: Um-hum. Mr. Schwartz, you satisfied with  
16 that?

17 MR. SCHWARTZ: I am, thank you.

18 THE COURT: Okay.

19 MS. BERKOVICH: I would like to bring up, though, the  
20 topic of the bar date for REALM and ENCORE. We are planning on  
21 filing a bar date motion for those two entities. We have  
22 discussed this with the U.S. Attorney's Office, the creditors'  
23 committee and the U.S. Trustee's Office.

24 What we would like to do is follow the procedure  
25 that's set forth in General Order M-350 that permits a debtor

1 to file a bar date motion without notice and seek to present it  
2 to the Court and have it entered as long as there's a  
3 representation that the form of order has been approved by the  
4 secured lenders as well as the creditors' committee.

5 If we were to have the bar date motion entered this  
6 week or early next week, we would be able to keep the same bar  
7 date, November 30th, that exists in the MLC case. We would  
8 have that general bar date also apply in the REALM and ENCORE  
9 Chapter 11 cases and still provide creditors in those cases  
10 with at least thirty-five days' notice of the bar date, which  
11 is consistent with the guidelines.

12 THE COURT: Thirty-five days?

13 MS. BERKOVICH: That would be the amount of time that  
14 we would propose would be sufficient for those debtors. There  
15 are not very many creditors of those debtors. We filed  
16 schedules to those debtors around noon today, and we don't  
17 believe there are any foreign creditors.

18 THE COURT: Tell me more about the creditor base you  
19 have and the nature of the debtors' business. Are these  
20 people -- are these debtors debtors that have created their own  
21 mess and have their own environmental issues?

22 MS. BERKOVICH: There's really two sets of liabilities  
23 that these debtors would have. The primary liabilities are on  
24 the properties that they own. These properties were  
25 transferred from General Motors to REALM and ENCORE and --

1 THE COURT: So whenever GM has a property that's an  
2 environmental mess it passes it on to one of these debtors?

3 MS. BERKOVICH: Not whenever; certain instances.  
4 There are about -- I want to say about fourteen to twenty  
5 parcels of property that REALM and ENCORE own. Although  
6 they're technically owned by REALM and ENCORE, for all  
7 practical purposes General Motors has treated these properties  
8 as owned by General Motors or MLC. And indeed, on the initial  
9 schedules that we filed for MLC, most of these properties were  
10 listed as MLC properties and only when we subsequently became  
11 clear from our review of the records that these properties do  
12 not belong to MLC but belong to REALM and ENCORE, we amended  
13 the MLC schedules, and they're now set forth in the REALM and  
14 ENCORE schedules. So the liabilities consist of these  
15 particular properties but they also consist of contracts.  
16 REALM and ENCORE essentially acted as the contracting party for  
17 General Motors with respect to contracts with environmental  
18 remediation companies.

19 THE COURT: Um-hum.

20 MS. BERKOVICH: So it was managed. These entities  
21 were really managing the environmental remediation process for  
22 General Motors. So the other set of creditors, in addition to  
23 the environmental regulators, would be the contract  
24 counterparties.

25 THE COURT: If there were ongoing remediation efforts

1 with environmental companies, I would have thought that there  
2 would be executory contracts with those companies under which  
3 those companies would have obligations to these new debtors,  
4 and presumably the debtors would have a duty to pay them.

5 MS. BERKOVICH: That's correct that these are under  
6 contract and the general contract principles would apply so  
7 that the debtors have an obligation to perform going forward,  
8 to pay to the extent they receive environmental remediation  
9 services, and they have to make a decision whether to assume or  
10 reject the contract.

11 THE COURT: How are these debtors going to be able to  
12 meet their obligations to those counterparties if they assume?

13 MS. BERKOVICH: Under the existing DIP order, MLC is  
14 permitted to and has historically always funded these debtors.  
15 And that's how these debtors would satisfy their remediation  
16 obligations.

17 We've discussed the filing of these entities with our  
18 primary constituents, including the creditors' committee and  
19 the U.S. Treasury, and they understand the way that these  
20 debtors will be funded as well as the obligations and  
21 liabilities of these debtors.

22 THE COURT: Now, what's your game plan for who you're  
23 going to provide notice to?

24 MS. BERKOVICH: The notice of the bar date will go to  
25 all known creditors of REALM and ENCORE as well as anyone who's



1 requested notice in the MLC Chapter 11 cases.

2 THE COURT: I guess what I'm having trouble getting my  
3 arms around is how you define "known creditors". Do you  
4 include, by way of example, the folks who live around the  
5 properties?

6 MS. BERKOVICH: Those were not on our intended notice  
7 list. We do not know of any environmental obligations that  
8 these debtors owe to those neighbors. We were also planning on  
9 publishing the bar date notice in the Wall Street Journal and  
10 the New York Times.

11 THE COURT: If somebody lives next door to your  
12 property you don't think that they have any basis for an  
13 environmental claim against the debtor?

14 MS. BERKOVICH: Well, one thing to keep in mind with  
15 these debtors is again, no one knows who REALM and ENCORE are.  
16 Essentially those properties have always been associated with  
17 General Motors. And so the very expensive notice that we  
18 provided in the MLC Chapter 11 cases, which was actually  
19 published today in newspapers throughout the country and the  
20 world, would in my view serve as sufficient notice that there  
21 is a bar date that relates to these properties. And if we  
22 publish the bar date notice for REALM and ENCORE in two widely  
23 read publications, that is the New York Times and the Wall  
24 Street Journal, that would be sufficient notice. I'm not sure  
25 how we would notice --

1 THE COURT: Ms. Berkovich, I fully understand that  
2 you're carrying the ball for partners who told you a game plan  
3 here. But I've got to tell you that I have big time problems  
4 with only thirty-five days' notice of environmental claims. I  
5 have problems with this kind of notice to people in the  
6 surrounding areas around the affected properties. The notion  
7 of sending notice by the Wall Street Journal or some national  
8 method as compared and contrasted to the local newspaper in the  
9 town where the properties are listed, all of course apart from  
10 anybody who's made claims, is a matter of great concern to me.  
11 I need to think about this a little more, which I'll try to do  
12 now.

13 Mr. Schwartz, you've got multiple hats in this. Are  
14 you still representing the EPA in addition to the buyers of Old  
15 GM?

16 MR. SCHWARTZ: I am. And, you know, my client at the  
17 end of the day is the United States of America. But that  
18 entails all of the governments' hats as creditors, so the  
19 taxing authorities, the secured lenders, the environmental  
20 regulators, contract counterparties, a number of different  
21 roles.

22 THE COURT: I assume the EPA is capable of taking care  
23 of itself, but --

24 MR. SCHWARTZ: Well, I --

25 THE COURT: -- do you have -- do you sense my

1       uncertainty about whether we've gotten our arms around  
2       potential environmental claims? Environmental claims are some  
3       of the most difficult to flesh out of all the claims we have.  
4       And I certainly am not proposing today to decide what's an  
5       admin claim and what's a prepetition claim and what's a  
6       continuing duty claim that may not be dischargeable and what  
7       can be answered to in the way of damages, but we have a  
8       potentially more complex matter than I think we've dealt with  
9       here.

10               MR. SCHWARTZ: I do hear those concerns. From the  
11       perspective of the EPA and the other environmental regulators,  
12       I think two things: One, we've been working with these debtors  
13       since obviously before they filed, since before the lead  
14       debtors filed, to have an understanding not only of the  
15       business but also of the legacy environmental liabilities. I  
16       do think that far before these debtors filed, the EPA has  
17       been -- and the DOJ has been dealing with the environmental  
18       liabilities of the REALM and ENCORE and were told, by the  
19       debtors at least, that the sites that we've been talking about  
20       under the rubric of GM include all of the liabilities of REALM  
21       and ENCORE. So I do believe that we've been having that  
22       discussion, one.

23               Two, I want to make very clear that as far as the bar  
24       date is concerned, the government still reserves all of the  
25       rights that are set out --

1 THE COURT: The government probably can take care of  
2 itself, in any event it's got the benefit of the hundred-day --  
3 eighty-day statutory provision.

4 MR. SCHWARTZ: So what we're really talking about, I  
5 guess, is potential tort claimants who had environmental type  
6 claims or third party environmental claimants like claims for a  
7 contribution. I honestly don't have a handle on what those  
8 claims look like with respect to these debtors. I don't even  
9 know, standing here today, which of the GM properties are REALM  
10 and ENCORE as opposed to MLC properties; that's how intertwined  
11 they've been.

12 THE COURT: Well, I don't either. And that's one of  
13 the reasons why I don't want to commit judicial malpractice.  
14 And I think that anybody who's read that John Grisham book  
15 knows that people can foul the community around them and injure  
16 the folks who live nearby. Now, I'm sure the EPA is going to  
17 bat for them, or at least will try, but I don't think that is  
18 fully sufficient to deal with my concerns.

19 Do you have any further thoughts for me on this, Ms.  
20 Berkovich, before I rule?

21 MS. BERKOVICH: The only thing I would say is that, as  
22 Mr. Schwartz says, the people in these communities don't know  
23 REALM and don't know ENCORE, and if we issue a bar date notice  
24 saying if you have a claim against REALM and ENCORE and we give  
25 them --

1 THE COURT: No, but it's been known to use d/b/a's in  
2 the past and to tell somebody that the company is called REALM  
3 and ENCORE but you may have thought that it was GM.

4 MS. BERKOVICH: Right, well -- okay. It's the -- I  
5 think these parties would file claims against -- probably  
6 against MLC, against Motors Liquidation Company, formerly known  
7 as General Motors Corporation, if they believe they have claims  
8 relating to that property. And so --

9 THE COURT: And what's your game plan if they file  
10 against the wrong debtor?

11 MS. BERKOVICH: Because the property happens to owned  
12 by REALM and ENCORE and they file --

13 THE COURT: Um-hum.

14 MS. BERKOVICH: I think that we would have to deal  
15 with them on a case by case situation, but I don't believe,  
16 standing here today, that we would seek to deny them a claim  
17 because it was technically filed against the wrong debtor based  
18 on the --

19 THE COURT: That would be wise, because if you argued  
20 to the contrary you'd be running into a buzz saw up on this  
21 bench.

22 MR. KAROTKIN: Your Honor, can I interject?

23 THE COURT: I think you better, Mr. Karotkin, because  
24 somehow I think she's carrying your baggage on this, and I've  
25 got concerns.

1 MR. KAROTKIN: I think, as was explained, these  
2 properties really were always known to be General Motors  
3 properties. And General Motors itself, or MLC as it is now  
4 called, is not trying to get out of that liability. It is not  
5 taking the position that because those properties were  
6 transferred to REALM and ENCORE that it, MLC, doesn't have the  
7 environmental liability. That is clearly not the case. So in  
8 terms of the buzz saw that you were alluding to, I don't think  
9 anyone --

10 THE COURT: Well, yeah, but that's probably the  
11 easiest of all the things that I've got to worry about.

12 MR. KAROTKIN: So to the extent that people believe  
13 they have claims -- again, these properties are fairly well  
14 known and notorious -- to the extent that people believe that  
15 they have claims relating to environmental contamination  
16 because they live near the property, they certainly will file  
17 claims or ought to be filing claims in the General Motors MLC  
18 Chapter 11 cases. We will not take the position that that's  
19 the wrong debtor and those claims will be addressed.

20 And as alluded to earlier, in connection, Your Honor,  
21 with the budget that was formulated with respect to the MLC  
22 wind-down budget, as you recall, there was a certain amount of  
23 money allocated to the cleanup of the various sites --

24 THE COURT: Well, those are postpetition dollars,  
25 right?

1 MR. KAROTKIN: Well, those are dollars allocated under  
2 the DIP loan to address the sites.

3 THE COURT: To fix the mess.

4 MR. KAROTKIN: To fix the mess, correct. And in  
5 coming up with those numbers, each of these sites that are  
6 owned by REALM and ENCORE were included. So no one is trying  
7 to take the position that we're trying to push these  
8 liabilities off to these companies that have really no assets  
9 or funding. So all of this was taken into account in  
10 formulating the wind-down budget. All of this is being taken  
11 into account in addressing with Mr. Schwartz's clients, with  
12 the EPA, with the states, an ongoing effort now as to what is  
13 going to be done to remediate these sites.

14 THE COURT: I'm with you on all of that, Mr. Karotkin,  
15 and it sounds to me that in cooperation with the government and  
16 the creditors' committee and having set up that wind-down  
17 budget -- and this is one of the reasons, if I recall, why the  
18 creditors' committee wanted to increase the amount of money  
19 they got as part of the wind-down process, you're going to do  
20 everything you can to clean up the existing mess and to make  
21 sure that these sites are as minimal problem going forward as  
22 possible.

23 MR. KAROTKIN: We are going --

24 THE COURT: But what we're talking about on a bar date  
25 is people filing prepetition claims for things that have

1 already been suffered, separate and apart from you taking the  
2 steps you just described to clean up the mess going forward.

3 MR. KAROTKIN: And again, Your Honor, those people  
4 know those properties to be General Motors properties, and in  
5 connection with the General Motors bar date, again, which was  
6 noticed over the last couple of weeks, they will be presumably,  
7 to the extent they believe they have claims, they will be  
8 filing claims in the General Motors case. And again, if they  
9 want to file claims in the REALM and ENCORE they of course  
10 could do that as well. But we certainly would not take the  
11 position, again, that they filed against the wrong debtor.

12 THE COURT: All right.

13 MR. KAROTKIN: That would not be fair.

14 THE COURT: Now, how would the estate be prejudiced if  
15 I ordered a sixty-day bar date notice period instead of the  
16 thirty that you're asking for?

17 MR. KAROTKIN: I think that's fine.

18 THE COURT: How would the estate be prejudiced, other  
19 than by a bunch of additional stamps, if I required you to send  
20 notice to any of the neighbors who you can identify?

21 MR. KAROTKIN: I don't know the answer to that  
22 question. I don't know -- I don't know enough about the  
23 properties to have an idea of how many neighbors are involved.  
24 For example, I know -- I think I've seen photographs, some  
25 aerial photographs of some of them. I know there's one up in



1 the state of New York, up in --

2 THE COURT: If this is the one that the Indian tribe  
3 complained about, I think it's a matter of substantial concern  
4 to them.

5 MR. KAROTKIN: Yes, and the Indian tribe is well aware  
6 of the Chapter 11, and I am sure, Your Honor, well aware of the  
7 fact that they would have to file a claim.

8 THE COURT: And I think the New York AG cares about it  
9 too --

10 MR. KAROTKIN: And the New York AG --

11 THE COURT: -- if I remember her argument.

12 MR. KAROTKIN: Correct, and the New York AGG is in  
13 communication with us all the time and is well aware of what is  
14 going on up there, and obviously we'll be involved with their  
15 views as what has to be done with respect to that site to  
16 protect the area as well as people who live in the area. I  
17 just, frankly, don't know what's involved in going through the  
18 neighborhoods and trying to find out who lives there and  
19 whether that's really easily done or not done.

20 But I think, Your Honor, again, these are well known  
21 General Motors sites, and the wide publication of the bar date  
22 in -- it's fairly well known that General Motors filed a  
23 Chapter 11 case and that to the extent people have claims they  
24 ought to be filing claims. And again, we will be addressing  
25 these claims -- I'm sorry, we will be addressing these sites

1 with the various federal and state authorities.

2 THE COURT: Okay.

3 MR. KAROTKIN: But I'm happy -- I mean, I'm not going  
4 to stand up here and tell Your Honor that a sixty day bar date  
5 is going to make a difference.

6 THE COURT: Okay.

7 MR. KAROTKIN: It's certainly not.

8 THE COURT: Any other thoughts from anyone before I  
9 rule?

10 Okay, folks, here's what we're going to do. First of  
11 all, the debtors' motion, other than to the extent that it  
12 purports to deal with the bar date, is approved.

13 On the bar date, it will be approved, subject to the  
14 following modifications that will be deemed to be applicable to  
15 these two new debtors. First, it will provide, in baby talk,  
16 for the extension that was agreed upon by the debtors and the  
17 U.S. Attorney acting on behalf of the EPA and any other  
18 environmental authorities for whom it acts.

19 Mr. Schwartz, when you negotiated that deal, were you  
20 also acting for state governmental authorities that might have  
21 those same 180 day rights?

22 MR. SCHWARTZ: I'm not sure exactly what you're  
23 characterizing as "the deal" as I --

24 THE COURT: Well, I thought you said you would  
25 withdraw your objection if the debtors made clear that you had

1 180 days.

2 MR. SCHWARTZ: No, I think -- yeah, that's not a deal,  
3 that's the statute, I guess.

4 THE COURT: That's the debtors acknowledging what the  
5 statute requires.

6 MR. SCHWARTZ: That's right. And I don't speak on  
7 behalf of any other governmental units, state or municipal --

8 THE COURT: Well, it seems to me, by way of example,  
9 that if the state of New York wishes to enforce that statute,  
10 they have no less rights to do it than the federal EPA does.

11 MR. SCHWARTZ: That's right, and I would think that  
12 the 180 days by statute needs to apply to all governmental  
13 units.

14 THE COURT: Yeah, so do I.

15 MR. SCHWARTZ: And --

16 THE COURT: Am I missing something, Mr. Karotkin?

17 MR. KAROTKIN: No, sir.

18 MR. SCHWARTZ: I confess --

19 MR. KAROTKIN: If I could just clarify something. I  
20 think what we said at the outset, and -- or maybe I  
21 misunderstood, but we were not asking you today to make a  
22 ruling that the existing bar date order apply to these cases.  
23 We were merely --

24 THE COURT: Wait, if you're not doing that then why  
25 did the government feel that it needed to object?

1 MR. KAROTKIN: Because originally we were -- I guess  
2 the implication was we were trying to do that and therefore the  
3 government objected, and I think as we advised your chambers  
4 earlier today, we said we had resolved it with Mr. Schwartz in  
5 saying that we are not asking you to approve any relief today  
6 with respect to a bar date. And then Ms. Berkovich was just  
7 advising you that the manner in which we would like to proceed  
8 would be in accordance with the local rule where we would  
9 submit an order, hopefully consented to by both the committee  
10 and the secured lender as to how a separate bar date order for  
11 these two entities would work.

12 THE COURT: I see. Well --

13 MR. KAROTKIN: And to the extent --

14 THE COURT: You can do that, but let me tell you what  
15 that order is going to have in it if it's going to pass muster  
16 by me --

17 MR. KAROTKIN: Okay.

18 THE COURT: -- and get signed by me. First of all,  
19 it's going to give everybody sixty days rather than the thirty  
20 that was originally mentioned, even if that means a later bar  
21 date for these two debtors than for the remainder of the  
22 debtors.

23 Secondly, it's going to say, in baby talk, something  
24 like d/b/a as General Motors or words to that effect. And make  
25 it clear in baby talk that some of these properties may have

1 had a GM name of them, and if you think you have a claim with  
2 respect to these properties you should file it.

3 Third, you don't have to waste your money on  
4 publication in the Wall Street Journal or a national paper but  
5 you will be required to print in the local newspaper for each  
6 of the towns in which any of these properties is located. And  
7 to the extent you know the addresses of neighbors, you've got  
8 to give actual notice and you can't rely on published notice.

9 And you've got to provide in baby talk in the  
10 subsequent bar date order that any claims -- in essence to  
11 paper what you just told me, which is fine, but you've got to  
12 paper it -- that claims that were previously filed against GM  
13 which turn out to be more appropriately asserted against these  
14 two new debtors will be deemed to be asserted against the two  
15 new debtors without prejudice to anybody's rights, if it  
16 matters, to contend that the original debtors are liable and  
17 your right to oppose that, or the creditors' committee's right  
18 to oppose that if you think that's not appropriate.

19 So with those clarifications, your motion's granted.

20 If any governmental authority wants the order to  
21 provide explicitly for its 180 day rights, you've got to put  
22 that in. As Mr. Schwartz properly observed, it's part of the  
23 statute, so it's there whether or not it's in my order, but I  
24 want you to comply with it.

25 Okay. Do we have anything else?

1 MR. KAROTKIN: No, sir.

2 THE COURT: All right. Have a good day.

3 MR. KAROTKIN: Thank you.

4 THE COURT: We're adjourned.

5 (Proceedings concluded at 2:29 PM)

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R U L I N G S

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Sharona Shapiro  
AAERT Certified Electronic Transcriber (CET\*\*D-492)

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Date: October 19, 2009